

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARI DANIEL, individually and as the  
Personal Representative of the Estate of  
MELVIN DANIEL; and, as Guardian for the  
minor children, M.A. Daniel, DOB 6/13/90,  
and B.A. Daniel, DOB 6/28/93; and, MARI  
DANIEL, as the Personal Representative of  
the Estate of FRED RAMISKEY,

Plaintiffs,

v.

THE COLEMAN COMPANY, INC., a  
Delaware corporation,,

Defendant.

No. 06-5706 KLS

ORDER REGARDING ADDITIONAL  
COSTS FOR DAVID PENNEY, Ph.D.

This matter comes before the Court on the Court's direction to the parties to submit additional detailed information relating to deposition expenses submitted by Dr. Penney which "(1) adequately explains the "Preparation Time" charged in the *Torrey* and *Daniel* cases; (2) adequately explains the basis of the \$80 ground transportation charge in both cases; and (3) adequately explains the basis of the copying charges of \$355 in both cases." (Dkt. #173)

The Plaintiffs filed their Reply and Declaration of Counsel Regarding Dr. Penney's Response to Supply Documentation of Deposition Expense (Dkt. #185) and the Defendant filed its Response. (Dkt. #193). The matter is now ripe for determination by this Court.

## BACKGROUND

This is a wrongful death products liability action brought against the Defendant. It is one of several similar cases involving the same counsel for both parties and, in some instances, the same expert witnesses.

The Plaintiffs' requested an order from this Court directing the Defendant to pay the deposition expenses incurred by four of their experts. (Dkt. #111-113). This Court directed payment for some of the deposition expenses in its Order Directing Payment of Witness Fees (Dkt. #173). However, the Court set forth specific issues with regard to deposition expenses claimed by Dr. Penney and directed counsel to provide additional information to assist the Court in determining the reasonableness of the charges.

## DISCUSSION

The Court requested additional information regarding (1) preparation time, (2) ground transportation, and (3) copying charges. Dr. Penney addressed each issue in his written response. He also addressed the flat rate deposition fee. This court has already ruled with regard to the deposition fee and that issue is not before this Court.

**1. Preparation time.** In its Order, the Court noted that Dr. Penney's bills showed that on the day of the depositions he spent two hours and eleven minutes of preparation in the *Torrey* case and one hour and forty-five minutes of preparation in the *Daniel* case. The undersigned further noted that it was unclear if this "preparation time" included travel time.

In his response, Dr. Penney states that the preparation time was spent in the early morning hours and that the amount of time in each billing is attributable to actual preparation for each case. The Court finds this to be a reasonable explanation of his time and is awarding the sum of **\$1,595.83**, as requested.

**2. Ground transportation.** Initially Dr. Penney charged "\$80 ground transportation to/from Traverse City, MI" in both the *Torrey* and *Daniel* case. The Court noted that the depositions in both cases were taken the same day, one following the other. It was unclear as to why both defendants should pay the same charge for the same transportation.

In his response, Dr. Penney acknowledged an error in his billing and now requests \$40 for ground transportation. It does appear that he drove to the deposition and he also asserts that during this time he was still preparing for the deposition. The Court assumes this means that he was thinking about the cases as he drove. The Defendant's Response suggests that Dr. Penney is only entitled to the statutory mileage

1 fee which it asserts is \$15.52 for each case. This does not, however, make allowance for Dr. Penney's  
2 time. The Court concludes that the request of **\$40** as a transportation fee is reasonable and that sum is  
3 awarded Dr. Penney.

4 **3. Copy charges.** The Court noted in its Order (Dkt. #173) that there was "nothing in the billing  
5 to show the basis for the amount charged" for copying fees. The information before the Court showed that  
6 Dr. Penney charged the sum of \$355.00 as a copying and FedEx charge for providing a copy of his file to  
7 defense counsel and that this exact same amount was charged in the *Torrey* and *Daniel* cases.

8 In his response, Dr. Penney states that he has no clerical help, that he copied the file himself and  
9 that he charges \$250.00 per hour for copying. He further advised the court that the "actual cost of using  
10 the copy machine and mailing (i.e. FedEx) are added to those for my time at the referenced rate."

11 The Defendant's Response includes the statement that Dr. Penney's file included 281 copies in the  
12 *Daniel* case and 206 copies in the *Torrey* case.

13 The undersigned finds that the proffered explanation is insufficient for this Court to find that the  
14 requested sum is a "reasonable" sum for purposes of paying an expert for time spent in responding to  
15 discovery pursuant to Fed. R. Civ. P. 26(b)(4)(A). Even though Dr. Penney does not have clerical help, it  
16 is unreasonable for him to charge the rate of \$250/hour to copy a 281 page file. There is no information  
17 before this Court that any portion of Dr. Penney's file contained documents that required special handling  
18 for copying purposes. No information was given this Court as to the amount of time required to do the  
19 copying nor was any detailed information provided this Court which set forth the "actual cost of using the  
20 copy machine" or the actual cost of mailing. The Court is required to make an independent determination  
21 regarding the reasonableness of the fees requested and that determination can only be made when specific,  
22 detailed information is provided.

23 While it is clear that Dr. Penney should be reimbursed for his copying and mailing costs, he has  
24 failed to provide the detailed information requested. The Court is therefore awarding Dr. Penney the sum  
25 of \$140.50 for copying costs. This sum was determined by multiplying the number of pages in his file  
26 (281) by the cost per page charged by the Clerk's Office in the Western District of Washington  
27 (\$.50/page).

28 **ORDER**

1 The remaining portion of the Plaintiffs' Motion to Compel Coleman to Pay Expert Witness  
2 Deposition Expenses (Dkt. #111) is **GRANTED** and the Defendant is ordered to pay Dr. Penney the  
3 additional sum of **\$1,776.33** within 30 days of the date of this Order.

4 DATED this 19<sup>th</sup> day of February, 2008.

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7 Karen L. Strombom  
8 United States Magistrate Judge  
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